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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,499

10/02/2006

Simon Peter Knightley

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EXAMINER

CHOI, PETER Y

ART UNIT

PAPER NUMBER

1794

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12/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/578,499	<b>Applicant(s)</b> KNIGHTLEY ET AL.	
	<b>Examiner</b> PETER Y. CHOI	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-19 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/06/06 and 10/09/08</u> .                                   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II, claims 16 and 17, in the reply filed on September 8, 2008, is acknowledged. The traversal is on the grounds that claim 11 is generic to claims 12-19. Although claim 11 in Applicants' submission of June 9, 2008, had previously not been generic to claims 12-19, Applicants' submission of September 8, 2008, has now rendered claim 11 generic to claims 12-19. Therefore, Group I is rejoined with Applicants' election of Group II. It should be noted that although Applicants argue that Applicants' election of Group II, claims 11-17 and 20-23 was proper, Group II in the Requirement for Restriction of May 9, 2008, only included claims 16 and 17. Therefore, it was unclear whether Applicants intended to elect Group II encompassing claims 16 and 17, or claims 11-17 and 20-23. However, Applicants' argument is rendered moot by the rejoining of Group I. Claims 18 and 19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Regarding claims 11-17, claim 11 recites a first layer of knitted coarse mesh material and a second layer of knitted coarse mesh material. It is unclear exactly what properties or characteristics are associated with “coarse mesh material” as Applicants’ specification does not provide quantitative and/or objective properties or characteristics associated with “coarse mesh material” with which to differentiate “coarse mesh material” from non-coarse mesh material. Additionally, regarding claims 11-17, claim 11 recites the knitted coarse mesh material including at least one of a natural fiber and a plastic fiber. However, claim 11 recites a first knitted coarse mesh material and a second knitted coarse mesh material. It is unclear whether the limitation is further limiting the first mesh material, the second mesh material or both.

Regarding claims 12-15, claim 12 recites that the mesh material is a knitted material with a claimed average stitch length. Claim 12 is dependent from claim 11, which recites a first mesh material and a second mesh material. It is unclear whether the limitation is further limiting the first mesh material, the second mesh material or both.

Regarding claims 13-15, claim 13 recites that the mesh material is formed from plastics fibers. Claim 13 is dependent from claims 11 and 12, and claim 11 recites a first mesh material and a second mesh material. It is unclear whether the limitation is further limiting the first mesh material, the second mesh material or both.

Regarding claims 14 and 15, claim 14 recites that each layer of the mesh material has a porosity of between 10% and 50%. It is unclear exactly how the porosity percentage is measured and what type of structure is described.

Regarding claims 16 and 17, claim 16 recites that the peripheral region has a greater mass per unit area than the mesh material. Claim 16 is dependent from claim 11, which recites a first

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mesh material and a second mesh material. It is unclear whether the limitation is further limiting the first mesh material, the second mesh material or both.

***Claim Rejections - 35 USC § 102/103***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11-15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,870,785 to Hoorens.

Regarding claims 11-15, Hoorens teaches a mat for reducing the disturbance of particulate matter by wind, the mat including a first layer of knitted coarse mesh material and a second layer of knitted coarse mesh material, wherein the first layer is held in a substantially fixed position relative to the second layer, and the knitted coarse mesh material including at least one of a natural fiber and a plastic fiber (see entire document including column 1 line 4 to column 4 line 16, claims 1-20). It should be noted that it is unclear exactly what structural limitations are associated with the claimed coarse mesh material such that it is necessarily differentiated from the mesh material of the prior art. Since Hoorens teaches a substantially similar structure and

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composition as the claimed invention, the claimed invention appears to be anticipated by or obvious over the prior art.

Regarding claims 12-15, Hoorens teaches that the average separation between the first and second layer is between 2 mm and 10 mm (column 2 lines 14-58). Regarding claims 12-15, Hoorens does not appear to specifically teach that the mesh material is a knitted material with average stitch length of between 2 mm and 6 mm, that each layer of the mesh material has a porosity of between 10% and 50%, and that each layer of the mesh material has a wind attenuation factor of between 40% and 80% for wind directed at right angles onto the mesh material at 50km/h. However, Hoorens teaches that the meshes have a cross-section of 0.5 mm to 10 mm, and since Hoorens teaches that the first and the second layer comprise a knitted structure, the mesh material necessarily comprises an average stitch length. Additionally, it is reasonable for one of ordinary skill in the art to associate mesh size with a pore size, and it is reasonable for one of ordinary skill in the art to expect that optimizing the stitch length further influences the mesh size or pore size in the final product, which Hoorens teaches is necessarily porous. Although Hoorens does not teach the claimed limitations and properties, the claimed limitations and properties appear to be inherent to the prior art since the prior art teaches a substantially similar structure and composition and formed by a substantially similar knitting process as the claimed invention. Products of identical structure can not have mutually exclusive properties. The burden is on Applicants to prove otherwise.

Additionally, it would have been obvious to one of ordinary skill in the knitted mat art at the time the invention was made to form the knitted mat of Hoorens, wherein the average stitch length is between 2 mm and 6 mm, as the knitted mat necessarily comprises an average stitch

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and a variable mesh cross-section, and motivated by the desire of forming a conventional knitted mat with an average stitch length suitable for the desired mesh cross-section and for the intended application. Similarly, it would have been obvious to one of ordinary skill in the knitted mat art at the time the invention was made to form the knitted mat of Hoorens, wherein the mesh material has a porosity of between 10% and 50%, as the knitted mat necessarily comprises a variable mesh cross-section and porosity, and motivated by the desire of forming a conventional knitted mat with a porosity suitable for the desired mesh cross-section and for the intended application.

Regarding claims 13-15, the mesh material is formed from plastics fibers (column 3 lines 37-64).

***Claim Rejections - 35 USC § 103***

6. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoorens, as applied to claims 11-15 above, in view of USPN 2,774,127 to Secrist.

Regarding claims 12-15, Hoorens appears to teach the average stitch length and porosity or it would have been obvious to optimize the claimed properties. Additionally, Secrist is classified in the same field in the art as Hoorens, and teaches a similar open-mesh knitted textile material comprising natural fibers and plastic fibers, wherein the material has 8 courses per inch, which is known in the art to be substantially similar and/or identical to stitch length in knitted materials (Secrist, column 1 line 15 to column 2 line 71, column 3 lines 1-31, column 5 lines 14-49, Examples 1-10). Secrist teaches that a material having such specifications is flexible with a relatively high initial resistance to deformation, and has strength, elastic conformability, and

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capacity for stress distribution suitable for use in plastic laminates. It would have been obvious to one of ordinary skill in the textile art at the time the invention was made to form the textile material of the prior art, having the courses per inch, as taught by Secrist, as Hoorens and Secrist are classified in the same field in the art, and motivated by the desire of forming a conventional open-mesh knitted textile material with courses per inch or stitch lengths known in the art to be predictably suitable for use in forming a textile material which is flexible with a relatively high initial resistance to deformation, and which has strength, elastic conformability, and capacity for stress distribution suitable for use in plastic laminates.

Additionally, although the prior art does not appear to specifically teach the claimed porosity and wind attenuation characteristics, the claimed characteristics appear to be inherent to the prior art as the prior art teaches a substantially similar structure and composition as the claimed invention. Products of identical structure can not have mutually exclusive properties. The burden is on Applicants to prove otherwise.

Additionally, it would have been obvious to one of ordinary skill in the knitted mat art at the time the invention was made to form the knitted mat of the prior art, wherein the mesh material has a porosity of between 10% and 50%, as the knitted mat necessarily comprises a variable mesh cross-section and porosity, and motivated by the desire of forming a conventional knitted mat with a porosity suitable for the desired mesh cross-section and for the intended application.

7. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoorens, as applied to claims 11-15 above, in view of WO 02/39857 to Reynolds.



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Regarding claims 16 and 17, Hoorens does not appear to teach a mat including one or more mats according to claim 11, further comprising a peripheral region which has a greater mass per unit area than the mesh material, wherein the first layer is attached to the second layer in the peripheral region. However, Reynolds teaches a substantially similar mat as Hoorens comprising multiple layers of porous mesh material, wherein the layers are secured at the perimeter of each layer (Reynolds, pages 1-6). It would have been obvious to one of ordinary skill in the mat art at the time the invention was made to form the mat of the prior art, wherein the layers are attached in the peripheral region, as taught by Reynolds, motivated by the desire of forming a conventional mat with specifications known in the art to be predictably suitable in forming mats suitable for use on various surfaces. Additionally, although the prior art does not specifically teach that the peripheral region has a greater mass per unit area than the mesh material, it is reasonable for one of ordinary skill in the art to expect that such a characteristic is inherent to the prior art since the prior art teaches a substantially similar structure and composition as the claimed invention. Additionally, it would have been obvious for one of ordinary skill in the art to form the mat of the prior art wherein the peripheral region has a greater mass per unit area than the mesh material, as it naturally flows from the prior art that the mat is suitable to be used on various surfaces such as the ground and as a ground cover for a camper, and that it is a desired characteristic of the mat for the peripheral region to have a greater mass per unit area than the mesh material such that the mat is anchored to the ground and has less tendency to be affected by various environmental factors, when used in the desired application.

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Regarding claims 16 and 17, the prior art does not appear to specifically teach that the mat is a helicopter landing mat and that the mat has a length and a width which exceed the rotor span of a helicopter. However, Applicants are not literally claiming a helicopter in conjunction with the claimed mat and the prior art mat necessarily has a length and a width. Therefore, a reference to the mat as a helicopter landing mat and a reference to a length and width which exceed the rotor span of a helicopter appear to be a recitation of the intended use of the mat. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Since the prior art teaches a substantially similar structure and composition as the claimed invention, the prior art appears to be capable of performing the intended use. Additionally, Reynolds teaches that the mat may be of any convenient size and shape, and can be extended (Reynolds page 5). It would have been obvious to one of ordinary skill in the mesh mat art at the time the invention was made to form the mesh mat of the prior art, wherein the size of the mat is optimized for various applications, as taught by Reynolds, motivated by the desire of forming a conventional mesh mat having a desired size predictably suitable for various applications.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER Y. CHOI whose telephone number is (571)272-6730.

The examiner can normally be reached on Monday - Friday, 08:00 - 15:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Peter Y Choi /PYC/  
Examiner, Art Unit 1794

/Andrew T Piziali/  
Primary Examiner, Art Unit 1794